



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 07 2016

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE
NOW THE
OFFICE OF LAND AND
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The Honorable Vanessa Allen Sutherland
Chairperson
U.S. Chemical Safety and Hazard Investigation Board
1750 Pennsylvania Avenue, NW
Suite 910
Washington, D.C. 20006

Dear Madam Chairman:

Thank you for your letter of February 8, 2016, to U.S. Environmental Protection Agency (EPA) Administrator Gina McCarthy, containing the Chemical Safety Board's (CSB) recommendations from its investigation of the April 17, 2013, fire and explosion at the West Fertilizer Company, a fertilizer blending, retail, and distribution facility in West, Texas.

In your investigation report, you issued the following three recommendations to the EPA:

CSB Recommendation No. 2013-02-1-TX-R1:

Develop a guidance document on Emergency Planning and Community Right-to-Know Act (EPCRA) requirements that is issued annually to State Emergency Response Commissions (SERCs) and Local Emergency Planning Committees (LEPCs) to ensure the guidance focuses on the following:

- a. Explains which chemicals are exempt and must be reported;
- b. Describes how emergency responders should use Tier I and Tier II inventory reports and Safety Data Sheets such as in safety training, practice drills, and for emergency planning; and
- c. Includes comprehensive LEPC planning requirements with an emphasis on annual training exercises and drills for local emergency response agencies.

CSB Recommendation No. 2013-02-1-TX-R2:

Develop a general guidance document on the agricultural exemption under EPCRA Section 311(e)(5) and its associated regulation, 40 CFR 370.13(c)(3), to clarify that fertilizer facilities that store or blend fertilizer are covered under EPCRA. Communicate to the fertilizer industry publication of this guidance document as well as the intention of Section 311(e)(5).

CSB Recommendation No. 2013-02-1-TX-R3:

Revise the Risk Management Program rule to include fertilizer grade ammonium nitrate (FGAN) at an appropriate threshold quantity on the List of Regulated Substances.

- a. Ensure the calculation for the offsite consequence analysis considers the unique explosive characteristics of FGAN explosions to determine the endpoint for explosive effects and overpressure levels. Examples of such analyses include those adopted by the 2014 Fire Protection Research Foundation report, "Separation Distances in NFPA Codes and Standards," Great Britain's Health and Safety Executive and other technical guidance.
- b. Develop Risk Management Program rule guidance document(s) for regulated FGAN facilities.

Here are our responses to these Recommendations.

Recommendation 1: The EPA prepared and published in November 2015, on-line training for states, tribes and local agencies on the reporting requirements of EPCRA and its implementing regulations. This course also summarizes the responsibilities placed on states, tribes and local agencies prescribed in the statute as well as to prepare them for chemical emergencies. The training may be found at <https://www.epa.gov/epcra>. In addition, the EPA developed a factsheet *How to Better Prepare Your Community for a Chemical Emergency: A Guide for State, Tribal and Local Agencies*. The training combined with the other guidelines at this website fully details EPCRA elements and reporting requirements specified in the recommendation. The EPA expects to regularly maintain and update this information as necessary. We, therefore, consider Recommendation 1 to be complete.

Recommendation 2: In the report, CSB acknowledges the EPA's existing Qs and As and correspondence with The Fertilizer Institute explaining that the fertilizer retail exemption under EPCRA Section 311(e)(5), and its associated regulation, 40 CFR 370.13(c)(3) is meant to apply to retail sales only and not the production or manufacture of fertilizer through blending or mixing. Although CSB recommends another general guidance document, the EPA is considering whether alternatives such as a specific advisory for the agriculture industry or tailored information on the website would be more effective to better explain how storage and/or blending of fertilizers is covered under EPCRA. The agency expects to determine the best next steps in early 2017 and will inform the CSB at that time.

Regarding recommendations 1 and 2, the EPA notes that our Region 6 office (Dallas, TX) has held 95 LEPC workshops in the past 3 years since the West Texas accident. These workshops involved over half of the LEPCs in the region along with 4,000 attendees. OSHA, DHS, and all five states participated. The workshops cover EPCRA requirements, as well as planning and training requirements and lessons learned from the West incident. Since 1988, Region 6 issues an LEPC Update each quarter to every LEPC, tribe, Regional Response Team (RRT) member and over 4,000 facilities about EPCRA, LEPCs, and other chemical safety matters. The Regional LEPC webpage provides almost every LEPC/EPCRA/CEPP document ever issued by the original Chemical Emergency Preparedness and Prevention Office, including the ammonium nitrate alerts issued by the EPA's Office of Emergency Management. Region 6 specifically issued a fact sheet to every LEPC, tribe, RRT member and over 4,000 facilities in the region on Hazardous Waste Operations training requirements, as a result of the West explosion. Finally, the EPA fully supports the HOTZONE conference each year which trains over 500 first responders in Region 6 and from other regions. This year, there are two classes on responding to ammonia incidents and in the past two years, there have been classes on ammonium nitrate incidents and response actions.

Recommendation 3: As you know, the EPA is currently working on final amendments to the Risk Management Program (RMP) regulation consistent with Executive Order 13650, Improving Chemical Facility Safety and Security following proposed amendments (81 FR 13637, March 14, 2016). The EPA's RMP proposal reflects substantial input from stakeholders on the elements of the proposed rule to improve chemical process safety, assist local emergency authorities in planning for and responding to

accidents and improve public awareness of chemical hazards at regulated facilities including a Request for Information (RFI) published July 31, 2014 (79 FR 44604).

The EPA already stated its intent with respect to Ammonium Nitrate (AN) in the proposed rule Preamble:

“However, this proposed rule does not address all of the topics included in the RFI. For example, the EPA is not proposing any revisions to the list of regulated substances and is therefore not addressing ammonium nitrate (AN) in this proposed rule. The EPA may propose listing additional hazardous substances in a separate action.

Currently, AN is not listed as a regulated substance under the RMP rule or the OSHA PSM standard. Required safe handling and storage practices for AN are covered under OSHA’s Explosives and Blasting Agents Standard (29 CFR 1910.109) and includes coverage of fertilizer grade AN in section 1910.109(i). Section 1910.109(k)(2) requires that manufacturing of explosives must meet requirements under OSHA’s PSM standard (29 CFR 1910.119); this would include any explosive manufacturing process involving AN. OSHA is considering whether AN should be added to the § 1910.119 Appendix A list of chemicals subject to the PSM standard, which could expand the standard’s applicability to include processes at fertilizer mixers, distributors and wholesalers who store and handle AN. OSHA is also considering whether to make changes to the AN storage and handling requirements in their Explosives and Blasting Agents standard which has requirements for AN stored with and without explosives and blasting agents. DHS is considering potential modifications of its Chemical Facility Anti-Terrorism Standards (CFATS) regulation, including reviewing the applicability and/or modification of screening TQs for chemicals of interest in Appendix A in 6 CFR part 27 which include AN (79 FR 48693, August 18, 2014). We plan to coordinate any potential change to the list of substances 40 CFR part 68 with the actions of these other agencies. Therefore, the EPA is not presently proposing that AN be added to the list of substances subject to the RMP rule, but the agency may elect to propose such a listing at a later date.”

Therefore, the EPA plans no immediate action with respect to Recommendation 3.

Thank you again for your letter. If you have any questions regarding our response, please contact me at (202) 566-0200 or Kim Jennings, Deputy Director, Regulations Implementation Division in the Office of Emergency Management at (202) 564-7998.

Sincerely,



Mathy Stanislaus
Assistant Administrator
Office of Land and Emergency Management